

**Introduction**

**MEMORANDUM**

December 7, 2007

TO: County Council

FROM: Jeffrey L. Zyontz, <sup>12</sup>Legislative Attorney

SUBJECT: Introduction – Zoning Text Amendment 07-17,  
Growth Policy – Special Exceptions and Local Zoning Map Amendments

Zoning Text Amendment (ZTA) 07-17 is sponsored by Council President Knapp. This ZTA would clarify and update the provision for special exceptions to address Growth Policy issues. It would also require an application for a local zoning map amendment to address Growth Policy issues. Other changes would edit the subject sections to make them easier to understand; gender specific and redundant text would be deleted.

The County's actions on November 13, 2007 adopting the Growth Policy established an effective date for all pending subdivision applications:

This resolution takes effect on November 15, 2007 and applies to any application for a preliminary plan of subdivision filed on or after that date. In accordance with County Code §50-35B, any preliminary plan of subdivision for which a completed application was filed on or after January 1, 2007 and which the Planning Board did not approve before November 13, 2007, is subject to this resolution.<sup>1</sup>

The Council's action did not address the Growth Policy's effect on pending special exceptions or local zoning map amendment applications. In January 2007, the Council put future applicants on notice that new standards may apply to their application.<sup>2</sup> No such notice was provided to applicants for special exceptions or local map amendments.

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<sup>1</sup> Resolution No.: 16-376

<sup>2</sup> "...any preliminary subdivision plan for which an application was filed after January 1, 2007, must be subject to any County Growth Policy or other adequate public facilities requirement adopted after the plan was approved if that Policy or requirement expressly applies to previously-approved plans. In considering any preliminary subdivision plan for which an application was filed before January 1, 2007, the Board must apply the County Growth Policy and other adequate public facilities requirements in effect when the application was filed." SRA 06-03.

The Zoning Ordinance requires special exceptions to have adequate transportation capacity under the Growth Policy's standard if the development is not required to get a new subdivision approved.<sup>3</sup> Planning Board guidelines require any applicant for a local zoning map amendment to submit a traffic study that indicates how the proposed development would satisfy the traffic requirements of the Growth Policy.

Recently the Maryland Court of Appeals has held that the law in effect at the time a case is decided must be applied to all zoning applications *unless the intent of the legislative body is clear to do otherwise*. In the absence of Council action, the Hearing Examiners will decide the applicability of the new Growth Policy to pending applications based upon their interpretation of the Council's action and the court's holding. Recommendations made by the Hearing Examiners would be subject to debate and litigation. The Council has the opportunity to clarify the rules for pending applications by amending the Zoning Ordinance.

The public hearing on ZTA 07-17 is scheduled for January 29, 2008 at 7:30 pm.

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<sup>3</sup> "...If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy." §59-G-1.21(a)(9)(i)

Ordinance No:  
Zoning Text Amendment No:  
Concerning: Growth Policy –  
Special Exceptions and  
Local Zoning Map Amendments  
Draft No. & Date:  
Introduced:  
Public Hearing:  
Adopted:  
Effective:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF  
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN  
MONTGOMERY COUNTY, MARYLAND**

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By: Council President Knapp

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**AN AMENDMENT to the Montgomery County Zoning Ordinance to:**

- clarify and update the process for special exceptions to address certain adequate public facilities issues;
- require an application for a local zoning map amendment to address certain adequate public facilities issues; and
- update and generally amend the process for review of special exceptions and local zoning map amendments.

By amending the following sections of the Montgomery County Zoning Ordinance,  
Chapter 59 of the Montgomery County Code:

DIVISION 59-G-1. "Special Exceptions - Authority and Procedure"  
Section 59-G-1.21. General conditions  
DIVISION 59-H-2. Map Amendments – Applications  
Section 59-H-2.4. Contents of standard method of application-Local map  
DIVISION 59-H-5. Hearing Examiner  
Section 59-H-5.11. The hearing  
Section 59-H-5.12. The report  
Section 59-H-5.3. Authority of hearing examiner

*EXPLANATION: **Boldface** indicates a heading or a defined term.  
Underlining indicates text that is added to existing laws  
by the original text amendment.  
[Single boldface brackets] indicate text that is deleted from  
existing law by the original text amendment.  
Double underlining indicates text that is added to the text  
amendment by amendment.  
[[Double boldface brackets]] indicate text that is deleted  
from the text amendment by amendment.  
\* \* \* indicates existing law unaffected by the text amendment.*

#### *ORDINANCE*

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*

**Sec. 1. Division 59-G-1. Special Exceptions - Authority and Procedure**  
**is amended as follows.**

**59-G-1.2. Conditions for granting.**

**59-G-1.21. General conditions.**

(a) A special exception may be granted when the Board[,] or the Hearing Examiner, [or the District Council, as the case may be,] finds from a preponderance of the evidence of record that the proposed use:

\* \* \*

(9) Will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.

[(i)] (A) If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must review the adequacy of public facilities [must be determined by the Planning Board at the time of] in its subdivision review. In that case, [subdivision] approval of a preliminary plan of subdivision must be [included as] a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the Board of Appeals must decide the adequacy of public facilities [must be determined by the Board of Appeals] when it considers the special exception [is considered]. [The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.] In its review, the Board must

28 consider whether the available public facilities and  
29 services will be adequate to serve the proposed  
30 development under the Growth Policy standards in effect  
31 when the application was submitted.

32 [(ii)] (B) With regard to [findings relating to] public roads, the  
33 Board[,] or the Hearing Examiner[, or the District  
34 Council, as the case may be,] must further [determine]  
35 find that the [proposal] proposed development will not  
36 reduce the safety of vehicular or pedestrian traffic.

37 \* \* \*

38 **Sec. 2. Division 59-H-2 Map Amendments – Applications is amended as**  
39 **follows:**

40 \* \* \*

41 **59-H-2.4. Contents of standard method of application-Local map**  
42 **amendments.**

43 [In case of] Each application for a local map amendment[, the application  
44 therefor shall be in such] must follow a form [as the district council may prescribe]  
45 prescribed by the District Council and [shall] must include [the following]:

46 \* \* \*

47 (f) Sufficient information to show that available public facilities and  
48 services will be adequate to serve the proposed development under  
49 the Growth Policy standards in effect when the application is  
50 submitted.

51 [(f)] (g) Such other relevant information as either the District Council or  
52 the Hearing Examiner [determines to be] finds necessary to  
53 evaluate the impact of a [particular application] proposed

development on public facilities[,] or existing or proposed  
development [in the immediate area of] near the application.

\* \* \*

**Sec. 3. Division 59-H-5. Hearing Examiner is amended as follows:**

**59-H-5.1. Duties of hearing examiner.**

**59-H-5.11. [The hearing] Hearing.**

The [hearing examiner shall] Hearing Examiner must conduct a public  
[hearings in accordance with section] hearing under Section 59-H-4.4 on [all  
applications] each application for a local zoning map [amendments] amendment  
that is not otherwise reserved for hearing by the [district council] District Council.

**59-H-5.12. [The report] Report.**

(a) Within 45 days after [the closing of] the record on any application  
closes, the [examiner shall] Hearing Examiner must forward to the  
[district council] District Council a written report [setting forth]  
including a description of the application, [his] findings, and [his] a  
recommendation of approval or denial, or for any other disposition of  
the application, together with [his] detailed reasons [therefore] for the  
recommendation. [Any] The Examiner may include any other  
[matters] matter of record which[, in the opinion of the examiner, are]  
the Examiner finds relevant [and pertinent for] to a decision by the  
[district council may be included by him] District Council. The  
[district council by resolution] District Council may extend the time  
for [such] the Examiner's report.

(b) [Recommendations of the hearing examiner shall] Any  
recommendation of the Hearing Examiner must be based on the  
evidence of record.

(c) [Concurrently with the transmittal] When the Hearing Examiner transmits a report to the [district council] District Council, the Examiner must also send copies [of the hearing examiner's report shall be mailed] to the applicant, the [planning board] Planning Board, and [to all persons and associations entering] each person or association who entered an appearance at the hearing, as [evidenced by] shown in the hearing transcript.

\* \* \*

**59-H-5.3. Authority of hearing examiner.**

(a) The [hearing examiner is hereby authorized to] Hearing Examiner may:

(1) schedule for public hearing any application for a local map amendment;

(2) [to] extend the time for [the] closing [of] the record, either to a time certain or for a reasonable [period of] time, [in those applications where in his discretion] if:

(A) the Hearing Examiner finds additional information or [governmental] government action is necessary on [matters material and] any relevant [to an application under consideration] issue, or

(B) [when] the applicant or [other] another party requests [such] a delay for good cause [shown];

(3) [to suspend, defer,] postpone or continue a public [hearings, either] hearing to a time certain or for a reasonable [period of] time [when in his discretion] if:

(A) the Hearing Examiner finds that the pendency of any proposed [preliminary or final] master plan, [or] sector



plan, [or amendments thereto] plan amendment, highway  
[plans] plan, capital improvement [programs or  
amendments thereto] program, zoning [and] or planning  
[studies] study, or zoning text [amendments] amendment,  
pending court [decisions] case, or other [matters of a]  
relevant [or material nature] matter may substantially  
affect [or bear upon] the application under consideration;  
or

(B) [when] the applicant or [other] another party for good  
cause requests [such suspension, deferral,] a  
postponement or continuance.

(b) The [district council] District Council may, by resolution, order the  
hearing examiner to [suspend, defer,] postpone or continue a public  
[hearings, the scheduling of public hearings] hearing or the issuance  
of [the examiner's] a report and recommendation on a local map  
amendment application, either to a time certain or for a reasonable  
[period of] time, when [such action] a delay is necessary to [provide]  
allow sufficient [reasonable] time for the [district council's adoption  
or approval of] District Council to approve any [preliminary or final]  
master plan, [or] sector plan, [or amendments thereto] plan  
amendment, zoning [plan] or planning study, highway plan or project,  
zoning text amendment, sewer, water, or other capital improvements  
project, [or amendments thereto] which may [in its discretion] have a  
substantial effect [or bearing upon] on any local map amendment  
application before the [hearing examiner] Hearing Examiner.

(c) The [hearing examiner is hereby authorized to] Hearing Examiner  
may issue subpoenas to compel the attendance of witnesses and

134 production of documents at any public hearing and [to] administer  
135 [oaths] an oath to [witnesses] any witness appearing before the  
136 [examiner] Examiner.

137 **Sec. 2. Effective date.** This ordinance takes effect 20 days after Council  
138 adoption.

139 This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council

Resolution No:  
Introduced: December 11, 2007  
Adopted:

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS A DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
WITHIN MONTGOMERY COUNTY, MARYLAND

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By: District Council

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Subject: Notice of Public Hearing on Zoning Text Amendment 07-17

Background

1. Section 59-H-9.3 of the Montgomery County Ordinance requires that, within thirty days of introduction of any text amendment, the Council act by resolution to set a date and time for public hearing on the proposed amendment.
2. Zoning Text Amendment No. 07-17, which would amend the Zoning Ordinance to clarify and update the provision for special exceptions to address Growth Policy issues, would require an application for a local zoning map amendment to address Growth Policy issues, would generally amend the process for review of special exceptions and local map amendments, was introduced on December 11, 2007.

Action

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland approves the following resolution:

Legal notice will be given of the public hearing to be held on January 29, 2008 at 7:30 p.m., in the Council Hearing Room, Stella Werner Council Office Building, Rockville, Maryland, for the purpose of giving the public an opportunity to comment on the proposed amendment.

This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council